

BEFORE THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO.885 OF 1994.

Date of Decision:-21-12-1995.

For Approval and Signature

THE HON'BLE MR. JUSTICE N.N. MATHUR.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judges ?

Mr. Y.S. Mankad, Advocate, for the petitioner.

Mr. N.N. Pandya, A.G. P. for the respondents no.1 and 3.

Mr. Sandip C. Shah, Advocate, for the respondent nos.2 and 4.

Respondent no.4 party in person.

Respondent nos.5 and 6 though served not appeared.

Coram:-N.N Mathur, J.

Date:--21-12-1995.

Oral Judgemnt:-

By way of this Special Civil Application Mandvi Nagarpalika statutory body constituted under the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act of 1963"), has challenged the order of the Collector, dated 3-11-1992 and the Director of Local Bodies dated 30-8-1993 whereby Mandvi Nagarpalika has been restrained

from demolishing the city fort wall in the town of Mandvi.

2. The short facts are that after considering overall view of development of town and the fact that the fort wall of the town was in dilapidated condition and become dangerous to the life of passerby and further nuisance was being created by using the area as public latrine and as such adopted a resolution to demolish the same. The Collector also agreed with the view of the petitioner Nagarpalika and as such moved a proposal to the State Government under the communication dated 15-10-1977 to hand over the fort wall to the Municipality and according to the G.R. dated 23-6-1978 the fort wall was handed over to the Municipality. Subsequently 8 shops touching to the fort wall were also demolished on certain terms and conditions. One of conditions in the said G.R. was that the Gadhrang Fort Wall will be demolished by the Mandvi Municipality and will provide that on reopening of the land after demolition of the wall the area will be developed as per the town planning scheme. It was also made clear that sale proceeds of the land will be of the Municipality. By another G.R. dated 29-11-1984 earlier G.R. dated 11-6-1984 was amended and transfer of the land was done as per the terms and conditions mentioned therein. Clause - 6 provides that "the part of the wall through State Highway passes will be demolished and the opened up land will belong to State" Under the sanctioned town planning scheme the wall is also required to be demolished in the public interest as High way passes through the wall. In view of this, Mandvi Municipality issued a public notice dated 22-6-1992 inviting tenders for demolition of the fort wall of the dimension of 290 mtrs. long and 2.70 mtrs. broad and 3 mtrs. height from Nava Naka upto River. However, on the application of certain interested persons the Collector, Bhuj in exercise of power under Section 258(1) of the Act of 1963 stopped demolition of the wall and asked Mandvi Nagarpalika to show cause. The Mandvi Municipality filed the detailed reply and stated that there was nothing illegal in the action. It was also stated that the State Government had earlier given permission for demolition of the wall. The wall was not declared as protected monument. However, the Collector, Bhuj confirmed the order restraining Mandvi Nagarpalika from demolishing the wall. The matter was taken before the Director of Municipalities who also rejected the same by the order dated 30-8-1993.

3. It is contended by Mr. Mankad, learned Advocate for the Mandvi Nagarpalika that the Collector has no

jurisdiction to pass the order under Section 258(1) of the Act of 1963 as there was neither breach of peace nor there was any illegality. It is further stated that demolition of the fort wall has become necessary for development of the town. He has also submitted that under the town planning scheme the fort wall is required to be demolished and the highway is to be constructed. This scheme has been sanctioned by the State Government. It is also stated that all the formalities have been completed for widening the road. It is pointed out that the wall is in dilapidated condition.

4. On the other hand, Mr. Pandya, learned A.G.P. submits that the fort wall is the ancient monument and it is required to be preserved. He has referred to the notification dated 26-8-1954. Government of India, notifications dated 1-5-1969 and 5-4-1975 of Government of Gujarat. By notification dated 26th April 1954 Government of India is a working policy directed that historical structures should not be destroyed unless such demolition is absolutely necessary and that too only after consulting the archaeology expert. This notification was issued 40 years back as working policy, prior to enactment of Gujarat Ancient Monument and Archaeology Sites and Remains Act, 1965(hereinafter referred to as Gujarat Act of 1965). Subsequent two notifications pertain to construction within 200 metre limit of the ancient monument. It may be stated that the Gujarat Legislature Assembly with a view to bring the proper provision for preservation of ancient and historical Monuments and records and archaeological sites and remains has enacted the law known as the Gujarat Ancient Monuments and Archaeological Sites and Remains Act, 1965. Section 3 of the Act of 1965 provides that for certain ancient and historical monuments shall deemed to be protected monuments. Section 4 of the Act of 1965 empowers the State Government to declare ancient and historical monuments to be protected monuments. In order to know the exact position of the fort wall in Mandvi town learned A.G.P. Mr. Pandya was asked to enquire from the Officers of the Archaeology Department of the State of Gujarat as to status of the fort wall of Mandvi. The Officer of the Archaeology Department has stated that the fort wall of Mandvi has yet not been declared as the protected monument. It is however stated that on the basis of technical report submitted by the Department of Archaeology, Department of Youth Services and Cultural Activities, Government of Gujarat intends to issue Notification under Section 3/4 of the Act of 1965 with respect to the area mentioned in the schedule appended to the draft Notification.

4. Considering the facts of the case, this Court by the order dated 13-12-1995 directed the Officer of the Archaeology Department to inspect the site along with the responsible officers of the Department of P.W.D., Bhuj, Collector, Bhuj and a representative of Nagarpalika, Mandavi and to make the report to this Court with respect to the condition of the fort wall. The said Committee has inspected the fort wall and submitted its report which reads as under :-

"1. Beginning with the Bheed Gate (Bheed Naka) of the city, Salatbari, Sonawala Gate (Naka), the Fort wall in front of the water tank no.2, and wall at the side of the Lake were observed and the walls were found to be broken and worn out. The gate also is worn out. Beside the Sonawala gate and the gate at the lake, the Nagarpalika has constructed shops. Major portion of the wall is broken out and the existing part is worn out and looks terrible.

The Committee made observation from zero point of the existing Fort wall parallel to the proposed bypass beginning from the end of the Rukmavati bridge and noticed the following facts.

- (1) The wall at a length of 90 mtrs. is fallen down and the PWD has constructed parapet wall in place of the old wall of the fallen fort.
- (2) From east to the west of the fort upto new gate, 260 mt. long wall is existing, which is in good condition.
- (3) The Fort wall is of 1.35 m. wide upto 3.15 m. height from plinth. On that wall there is parapet on 0.50 wide and 1.35 m. height.
- (4) There is Tar road of min. 3.60 m. max. 4.00 mt. width outside the fort wall (North) and close to the tar road at the north situate the Jain Cremation House (parallel to the road).

At 90 mt. distance straight way from tare on the west and close to the road, there is the SAMADHI OF Guruji (parallel to road 0 34.50 mt. long) and straightway parallel to that comes the

Masjid of Dhobi (26.70 mt. Ahead, parallel to that upto the remaining length, Namdeshwar Mahadev Mandir is situated. Its length is 100 mt. and close to that there is a garage of 6 mt. length.

(5) On the south of the Fort wall there is rough road having min. 3.30 and max. 3.55 mt.width.

(6) If the planning to widen the proposed bypass to 7 mt. from the existing 3.60 mt. is implemented, the road will pass through the middle of the existing wall, which is in good

3. Looking to the above condition, the committee has reached to the following conclusion:-

(1) On observation of the Fort wall of the entire Mandvi City, it has been found that three-fourth portions of the walls have fallen down. Some portions are worn out and become dangerous.

(2) About 25% of the Fort wall coming on the way of the Bhuj-Nalia bypass proposed to be undertaken by the PWD, has been fallen down. The remaining existing portion is in good condition."

5. The Department of Archaeology has also produced certain photographs of the fort wall of Mandvi city on 16-12-1995. The same are taken on record. I have also heard Mr. Mahendrakumar Chandulal Bhansali. He has produced the Report dated 9--2-1994 of Mr.M.H. Baghan. An Architect. Mr. Baghan after inspection of the fort wall reported that the wall, gate and buruj of Mandvi Fort wall shows that large portion on either side is already demolished and the present existing wall is the only one that is preserved so far. He has also certified that the present condition of the wall, gates and the buruj is sound and with proper maintenance and care wall can last for atleast 12 to 15 generation which cannot be considered as a historical and archaeological heritage of our country and especially of the wall and more particularly at the gates and the buruj are worth preserving and should be preserved. He has also stated that furry of Rukhmavathy river during the monsoon and also kept the city from inundation from flooding of Rukhmavathy river. He further certifies that the fort

wall has withstood the harsh climates and sand storm typical a Runn Kutch and also prevented the city from such a furry. His further suggestion is that so far as the State Highway is concerned its alignment can be slightly deviated. Mr. Bhansali has showed me a map of the site and has tried to convince me that the road can be widened without disturbing the fort wall. He has vehemently contended that looking to the glorious history of Mandavi there is no illegality in the order of the Collector as confirmed by the State Government, in asking the Nagarpalika not to pull down the fort wall.

6. I have considered the rival contentions of the parties. It appears from the Report of the Committee head by Mr. A.D. Gosai, that most of the fort wall is broken and it is in dilapidation condition. I have also seen the photographs. It is true that a fort wall in an ancient monument. Such monument is required to be preserved as an evidence of ancient architecture, culture and history of a town and the country. Equally in the modern competitive developing society, a proper Town Planning Scheme is essential for the healthy and orderly development of the area. It also achieves social and economic aims. In the competitive society the speed of development of the town cannot be brought to halt by keeping it as captive within the fort wall in the name of cultural heritage. A balance is required to be maintained between two. In my view, purpose would be served in case where the monument has not been declared protected monument, if only a part of the monument in consultation of the Archaeology Department, is kept alive and is properly maintained without extra beautification and rest of the part is alleged to be pulled down, if it is considered necessary under a sanctioned Town Planning Scheme. In fact this recourse is being adopted in all ancient cities of the country. Fort walls have been pulled down while preserving the gates, barrage and where necessary a part of the wall, in cities like, Delhi, Hyderabad, Ahmedabad, Undaipur, Jodhpur etc. Fort wall is nothing new in Mandvi town. It is very common and known in various parts of the country and the world. Thus, in my view the Fort wall in the Town of Mandvi should be allowed to be pulled down in accordance with the sanctioned Town Planning Scheme, while keeping intact the gates, barrage and kothas, as per the advise and instructions of the Archaeology Department. So far as to prevent the town of Mandvi from the flood of Rukhmavati river is concerned, it does not require a broken Fort wall but a proper planning by the State and concerned local authorities. I am sure the concerned authorities must be alive to issue and will take care of it.

7. In the result, this Special Civil Application is allowed. The order of the Collector, Bhuj dated 3-12-1992 and that of the Director of Local Bodies dated 30-8-1993 are hereby quashed and set aside. The Petitioner Mandvi Nagarpalika is permitted to pull down the Fort wall in accordance with the sanctioned Town Planning Scheme while keeping intact the gate, barrages, Kothas etc. in consultation with the Archaeology Department. It will be open to pull down the gates, barrages, Kothas as well in due course if the Archaeology Department so permits. It will be the responsibility of Mandvi Nagarpalika to properly maintain subject part of the monuments of specimen. Rule is made absolute as indicated above. There shall no order as to cost.

8. Mr. Pandya, learned A.G.P. submits that this order may not be given effect for a period of two months. This request appears to be reasonable and the same is granted.

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